

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM MORRIS EBON,

Defendant.

Case No. 2:12-cr-00072-APG-CWH-2

**ORDER DENYING MOTIONS TO
RECONSIDER AND TO STRIKE
AND
SETTING DETENTION HEARING**

(ECF Nos. 84, 88)

I granted defendant William Ebron's motion to vacate his conviction for brandishing a firearm during a "crime of violence" under 18 U.S.C. § 924(c). Because this was Ebron's only conviction in this case, I ordered the government to show cause why Ebron should not be released from custody.

A. Reconsideration of my prior order

In its response to my order, the government asked me to reconsider my decision. ECF No. 82. Ebron moved to strike that response because the government had already filed an appeal, divesting me of jurisdiction to entertain reconsideration. ECF No. 84. The government concedes that its appeal may have been premature, but suggests a "pragmatic" solution would be for me to indicate my willingness to consider its request for reconsideration (so the government knows whether to move to dismiss its appeal). ECF No. 86.¹

The government's motion for reconsideration raises two arguments: (1) that Ebron procedurally defaulted the argument he made in support of his original motion, and (2) that because he admitted to committing the lesser included offense of Hobbs Act Conspiracy, I should sentence him for that. I deny the government's motion. *See* Fed. R. Civ. P. 62.1(a)(2). *See also*, Fed. R. Crim. P. 37(a)(2).

¹ The government also filed a separate motion to reconsider, asserting the same arguments from its response to my order. ECF No. 88.

As to the government's argument that Ebron should be sentenced for conspiracy to commit Hobbs Act robbery merely because he admitted to the underlying facts in his plea agreement, the government offers scant authority to support its position. It cites a single case where the Supreme Court addressed this issue in dicta only. There, the Court stated that it need not "consider the precise limits on the appellate courts' power to substitute a conviction on a lesser offense for an erroneous conviction of a greater offense." *Rutledge v. United States*, 517 U.S. 292, 306 (1996). In *Rutledge*, as in the cases cited by the Supreme Court on this point, the defendant was convicted of both the greater offense and the lesser included offense. *Id.* (and cases cited there). Here, Ebron was not convicted of Hobbs Act Conspiracy, so it is not appropriate to sentence him on that charge.

////
////

The government requests that Ebron remain in custody pending its appeal of my order. Pursuant to 18 U.S.C. § 3143(c), I am to treat the defendant in accordance with 18 U.S.C. § 3142. Thus, I will hold a hearing on whether to release or detain Ebron on Monday, September 18, 2017 at 2:00 p.m. in Las Vegas courtroom 6C. The Pretrial Services Office will contact Ebron's counsel to arrange an interview with Ebron before that hearing. The parties may file briefs on whether Ebron should be detained by 12:00 noon on Friday, September 15, 2017.

Page 3 of 3